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Sam A. Schmidt, Esq.

January 13, 2025

Honorable Lewis A Kaplan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: *United States v. Matthew Queen*
24 Cr. 291 (LAK)

Dear Honorable Judge Kaplan:

This brief letter is in response to SWBTS's reply to defendant's opposition to the motion to quash or modify the subpoenas. We respectfully request your Honor permit this surreply.

In its response, SWBTS complains that defendant cited no caselaw. The law is clear and simple.

The attorney-client privilege protects communications (1) between a client and his or her attorney (2) that are intended to be, and in fact were, kept confidential (3) for the purpose of obtaining or providing legal advice. *See In re County of Erie*, 473 F.3d 413, 419 (2d Cir.2007).

United States v. Mejia, 655 F.3d 126, 132 (2d Cir. 2011). We seek no communication between SWBTS as an entity and Mr. Poe. Much of what was requested was not intended to remain confidential such as his notes of the DOJ interviews. No document relates to Mr. Poe providing legal advice to the entity.

In order to balance this protection of confidentiality with the competing value of public disclosure, however, courts "apply

[the privilege] 'only where necessary to achieve its purpose' " and "construe the privilege narrowly because it renders relevant information undiscoverable." *In re County of Erie*, 473 F.3d at 418 (quoting *Fisher v. United States*, 425 U.S. 391, 403, 96 S.Ct. 1569, 48 L.Ed.2d 39 (1976)). The party asserting the privilege, in this case Rodriguez, bears the burden of establishing its essential elements. *See von Bulow ex rel. Auersperg v. von Bulow*, 811 F.2d 136, 144 (2d Cir.1987).

Mejia, 655 F.3d at 132. Further, SWBTS had been represented by Michael Anderson, Esq. for a significant period of time prior to being notified that the government sought to interview some of its employees.¹ Anderson was present for the interviews. Poe was retained specifically to represent employees for the interviews.² Additionally, counsel for SWBTS makes up facts. SWBTS counsel claims that

Queen acknowledges that he retained individual counsel as soon as he became a target of the government's investigation, hiring Texas criminal defense attorney Leigh Davis. See ECF No. 68 at 4.

This is not what was stated. What was stated was that "[s]oon after testifying in the grand jury Dr. Queen retained a **new** attorney, Leigh Davis." (Emphasis added). In my conversations with Mr. Davis, he confirmed that neither he nor Dr. Queen were told nor were they aware that Dr. Queen was a target until on or about March 11, 2024, when Mr. Davis was informed by the government approximately nine (9) months after retaining new counsel.

Dr. Queen never talked to Mr. Poe in the presence of Colby Adams so Adams cannot have personal knowledge of what he claims Mr. Poe said to Dr. Queen. Further, had Mr. Poe told every employee "that [he] explicitly told every Seminary employee that he represented the Seminary as an entity, not the employees individually, and that each employee had the right to get his or her own lawyer if they chose to do so," undoubtedly it would be reflected in the notes of his first conversations with each of the employees. Had that occurred, counsel for

¹ Apparently Anderson does not do criminal defense work and Poe does.

² The notes and reports of the interviews for those employed at SWBTS indicate that both Poe and Anderson were present at the interviews.

SWBTS would have made that clear in its original motion and reply.

Defendant urges Your Honor to order SWBTS to provide the documents forthwith.

Thank you for Your Honor's consideration of this matter.

Sincerely yours,

/s/

Sam A. Schmidt
Attorney for Matthew Queen